

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of Randall Ehrlich

Docket No. C2020-1

PRESIDING OFFICER'S RULING DENYING REQUEST FOR AN INDEFINITE
ABEYANCE AND GRANTING 30-DAY EXTENSION OF PROCEDURAL DEADLINES

(Issued April 24, 2020)

I. INTRODUCTION

On April 23, 2020, counsel for the Postal Service transmitted a request to the Presiding Officer via e-mail seeking an indefinite abeyance of this proceeding. See Attachment. The rationale provided was that the Postal Service, and particularly the local Ballard Post Office and Seattle District management, was unable to respond to discovery under the established timeframes due to COVID-19. See *id.* Counsel for the Complainant does not oppose holding the proceeding in abeyance for more than 30 days; but, he objects to further extensions without a showing of a particularized need. See *id.* He references the modest nature of the discovery requests, the extent of the resources available to the Postal Service, and that the alleged discriminatory behavior has persisted for 5 years. See *id.*

The request to hold the proceeding in abeyance indefinitely is denied due to insufficient justification of the need for such relief and potential prejudice to the Complainant. Because neither party objects to a 30-day extension of the established procedural deadlines and affording local management 30-days additional time to respond to discovery is reasonable, the established procedural deadlines shall be extended accordingly, as set forth below. While the situation relating to COVID-19 is

evolving and difficult to predict, no further extensions or continuances shall be granted without a particularized showing of good cause that specifically connects the act that is scheduled to be performed on the established deadline and the basis for the requested extension. This statement is not meant to suggest that brief extensions that are limited, reasonable, and non-prejudicial would not be allowed from time to time.

II. CHANGES TO THE PROCEDURAL SCHEDULE

Intervention. The deadline to file a notice of intervention pursuant to 39 C.F.R. § 3001.20 (formal intervention) or § 3001.20a (limited participation) is June 1, 2020.

Discovery. The parties shall transmit their initial requests that the Presiding Officer obtain specific discovery via e-mail by June 1, 2020 at 7:30 p.m. Eastern Daylight Time (4:30 p.m. Pacific Daylight Time); failure to do so shall result in waiver of the right to request discovery in this case. The Presiding Officer's First Set of Interrogatories to the Complainant and The Presiding Officer's First Set of Interrogatories to the United States shall be treated as if served on May 18, 2020 (rather than on April 16, 2020).¹ All other discovery timeframes remain as previously established.²

Prehearing conference. A prehearing conference is scheduled to be conducted before the Presiding Officer on August 20, 2020 at 1:00 p.m. Eastern Daylight Time (10:00 a.m. Pacific Daylight Time) by telephone. Additional prehearing conferences may be scheduled, if necessary.

Presentation of evidence. The deadline to file a request to hold a hearing before the Presiding Officer for the oral presentation of evidence (including any testimony) shall remain no later than 7 days before the prehearing conference and shall specify each witness for which oral testimony is proposed.

¹ See *generally* Certificate Regarding Discovery, April 16, 2020.

² See *generally* Presiding Officer's Ruling Establishing Procedural Schedule and Additional Case Management Procedures, April 16, 2020.

Hearing. The hearing of evidence in this case shall begin October 1, 2020.

III. RULING

1. The request to hold the proceeding in abeyance indefinitely is denied.
2. The deadline to file a notice of intervention pursuant to 39 C.F.R. § 3001.20 (formal intervention) or § 3001.20a (limited participation) is June 1, 2020.
3. A prehearing conference is scheduled to be conducted before the Presiding Officer on August 20, 2020 at 1:00 p.m. Eastern Daylight Time (10:00 a.m. Pacific Daylight Time) by telephone.
4. The hearing of evidence in this case shall begin October 1, 2020.
5. A request to hold a hearing before the Presiding Officer for the oral presentation of evidence (including any testimony) shall be filed no later than 7 days before the prehearing conference and shall specify each witness for which oral testimony is proposed.
6. The Secretary shall arrange for publication of the deadline to file a notice of intervention, the date of the prehearing conference, the deadline to request an oral hearing, and the date of the hearing in the *Federal Register*.

Lauren A. D'Agostino
Presiding Officer

Attachment – April 23, 2020 E-mail chain regarding request for an indefinite abeyance

From: Adam P. Karp
To: ["Meadows, B Jeff - Washington, DC"; D'Agostino, Lauren A](#)
Cc: ["Raynor, LaSandy K - Landover, MD"; Adam Karp](#)
Subject: RE: C2020-1 Complaint of Randall Ehrlich - request for abeyance
Date: Thursday, April 23, 2020 3:27:58 PM

Good afternoon,

Mr. Ehrlich has patiently waited for five years for reliable and nondiscriminatory mail delivery. Accordingly, he is exceedingly generous to wait another month, but to place an indefinite hold on adjudication is unacceptable to him, particularly given the limitations placed on discovery in this single matter and the fact that the USPS is no doubt engaged in litigation before the PRC (and likely other bodies) in dozens, if not hundreds of other pending cases. Has USPS asked for a stay in all other cases around the country, or before the PRC? If so, have stays been granted? If not, then a particularized assessment is warranted here, as well, and if Mr. Ehrlich and I can meet the deadlines, so can a national entity with multiple attorneys and thousands of employees.

As an aside, I am a solo and am in the midst of litigation in State and federal court, at the trial and appellate levels, on dozens of cases. Other than postponing in-person depositions and trials, everything else continues at the same clip with, perhaps a few extra days here and there as a courtesy. If I can do it, so, it seems, can two competent attorneys in DC with access to several managers and employees who can respond to modest discovery requests.

Accordingly, we respectfully object to more than 30 days.

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From: Meadows, B Jeff - Washington, DC <B.Jeff.Meadows@usps.gov>
Sent: Thursday, April 23, 2020 12:08 PM
To: D'Agostino, Lauren A <Lauren.dagostino@prc.gov>
Cc: adam@animal-lawyer.com; Raynor, LaSandy K - Landover, MD <Lasandy.K.Raynor2@usps.gov>
Subject: C2020-1 Complaint of Randall Ehrlich - request for abeyance

Dear Presiding Officer D'Agostino:

After speaking with local management in the Seattle District, the Postal Service is requesting a temporary, indefinite abeyance of the C2020-1 proceeding due to the COVID-19 pandemic. Accordingly, we would ask you to postpone the established deadlines, including the discovery deadlines (the parties' submission of discovery requests due on May 1st and the parties' responses to your interrogatory requests due on May 7th), the July 20 prehearing conference date, and the September 1 formal hearing date, while this matter is held in indefinite abeyance. The Postal Service, as a whole, including the Seattle District and the Ballard Post Office, is focused on dealing with the serious impacts of the COVID-19 crisis. The Seattle area has been especially hard hit by the COVID-19 pandemic, and the Postal Service is no exception. The pandemic has led to serious challenges for local management, since the health and well-being of our employees remains our highest priority as we continue normal operations during this unprecedented time. Management is actively engaged in keeping our employees and customers safe in accordance with CDC recommendations. In an effort to reduce the spread of the coronavirus and to meet compliance with state and local ordinances, the Postal Service has implemented several initiatives to adhere to social distancing recommendations, as well as adding additional cleaning and disinfecting of facilities and commonly touched surfaces, such as vehicles and mail transport equipment. This is an unprecedented situation the Postal Service is dealing with, and local management does not have sufficient resources to begin the discovery process at this time while it is attempting to preserve as much operational continuity as is possible for its customers. Given these challenges, management at the Ballard Post Office and the Seattle District are not in a position to respond to discovery from either the Presiding Officer or Complainant at this time.

I have communicated with Adam Karp, Complainant's counsel, who has indicated that Complainant would not oppose a 30-day stay. While the Postal Service appreciates Complainant's willingness to agree to a 30-day abeyance, we are requesting an indefinite abeyance at this time given the exceptional circumstances caused by the COVID-19 pandemic. There is no reasonable method to predict when the pandemic will be contained in the Seattle area such that Postal Service operational conditions will even begin to approach normalcy. But, given the situation, it is most reasonable to assume that these extraordinary conditions will persist for at least several more months; this is especially true of "hot spot" areas like Seattle.

Thank you for considering this request. Please do not hesitate to contact me if you have any questions about this request. Mr. Karp is copied on this message.

Sincerely,
Jeff Meadows

B.J. Meadows III
Attorney, Corporate and Postal Business Law
United States Postal Service
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